United Nations S/AC.49/2013/23

Security Council

Distr.: General
14 October 2013

Original: English

Security Council Committee established pursuant to resolution 1718 (2006)

Note verbale dated 3 October 2013 from the Permanent Mission of Malta to the United Nations addressed to the Chair of the Committee

The Permanent Mission of Malta to the United Nations presents its compliments to the Chair of the Security Council Committee established pursuant to resolution 1718 (2006) and has the honour to transmit the report of Malta on the implementation of Security Council resolutions regarding the Democratic People's Republic of Korea, as well as the Laws of Malta,* which consolidate the implementation measures of those resolutions (see annex).

* The text is on file with the Secretariat and is available for consultation.

13-55165 (E) 201113

Please recycle

Annex to the note verbale dated 3 October 2013 from the Permanent Mission of Malta to the United Nations addressed to the Chair of the Committee

Malta is submitting a report to the Security Council on the steps or concrete measures that have been taken in order to implement effectively the provisions of Security Council resolutions 1718 (2006), 1874 (2009) and 2094 (2013), pursuant to the guidelines on the preparation and submission of national implementation reports.

Upon the adoption of Security Council resolutions 1718 (2006) and 1874 (2009) relating to the Democratic People's Republic of Korea, subsidiary legislation was enacted under the power of the Laws of Malta, in particular the power of the National Interest (Enabling Powers) Act, chapter 365 of the Laws of Malta. In respect of Security Council resolution 1718 (2006), subsidiary legislation 365.23, entitled "United Nations Sanctions (Democratic People's Republic of Korea) Regulations"[a] was issued in the form of a Legal Notice dated 10 November 2006, and in respect of Security Council resolution 1874 (2009), subsidiary legislation 365.29, entitled "United Nations Sanctions (Democratic People's Republic of Korea) (Further Sanctions) (2009) Regulations"[b] was issued in the form of a Legal Notice dated 18 September 2009.

In all sanctions-related matters, the Ministry of Foreign Affairs chairs and coordinates the Sanctions Monitoring Board, which is the national authority responsible for sanctions implementation and monitoring. The Sanctions Monitoring Board was initially established under Legal Notice 184 of 1994. That Legal Notice was repealed by virtue of Legal Notice 187 of 2000, which, in turn, re-established a Sanctions Monitoring Board to reflect the working modalities of the Board at the time.

Under Legal Notice 187 of 2000, the Sanctions Monitoring Board had the function of monitoring the operation of regulations made under the "National Interest (Enabling Powers) Act" (chapter 365) in accordance with such directives as provided for under article 3, sub-articles (1), (3), (5), (6), (7) and (8) of the Act, with a view to harmonizing practice thereon with that followed by other States enforcing the sanctions relative to the same regulations.

In the exercise of the powers conferred by article 3 of the National Interest (Enabling Powers) Act, the Prime Minister issued Legal Notice 327 of 2006, defining the composition and functions of the Sanctions Monitoring Board. That Legal Notice was repealed and the Sanctions Monitoring Board is now governed by Legal Notice 562 of 2010. The Board comprises members from different ministries and public entities, namely, representatives from the Office of the Attorney General, the Office of the Prime Minister, the Ministry of Justice and Home Affairs, the Ministry of Finance, the Trade Division, the Customs Department, the Central Bank, the Ministry of Transport and Infrastructure, and the Malta Financial Services Authority. Transport Malta and Malta Enterprise have observer status on the Board.

---

[a] Available from www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=10394&l=1.

[b] Available from www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=10400&l=1.

The Board is chaired by the Director-General, Global Issues, International Development and Economic Affairs, at the Ministry of Foreign Affairs.

The Sanctions Monitoring Board provides the technical expertise required for the contribution of Malta to the formulation of European Union sanctions. Board members are then responsible for ensuring the implementation of sanctions measures and for communications to the relevant stakeholders in their respective fields.

The Sanctions Monitoring Board is also tasked with responding to sanctions-related queries from the general public. Owing to the increasing complexity of sanctions regulations, members of the public often have queries regarding the application of those measures. In that respect, they are entitled, by law, to a ruling by the Board. The Board is also the competent national authority acting in accordance with United Nations and European Union regulations for authorizing certain requests under specified exemptions, where this is required by the relevant United Nations and European Union legal instruments.

The Ministry of Foreign Affairs chairs and coordinates all the work of the Board. Over the years, entities, including members of the public, law firms, companies and commercial banks have sought the direction and, where required, the clearance of the Board, in the form of requests for information and authorization, which were made to the Sanctions Monitoring Board. In order to facilitate communication with the general public, in 2012, the Ministry of Foreign Affairs introduced a generic sanctions e-mail (sanctions@mfa.gov.mt), to which members of the public may direct their sanctions queries.

Moreover, the Malta Financial Services Authority maintains a section dedicated to sanctions on its website (http://mfsa.com.mt/pages/viewcontent.aspx?id=105). New sanctions are uploaded to the relative pages as they are issued, and users also have the option of searching sanctions by country. In addition, the Authority also periodically issues notices and guidance to its licence holders, advising them of the international sanctions in force and reminding them of their obligation to report to the Authority the findings of their verifications and the actions taken and to duly inform the national competent authority of any action taken. In addition, as part of its ongoing supervision processes, the Authority conducts on-site visits, during which processes and documents are reviewed by the inspectors of the Authority in order to ensure that adequate systems are in place to enable licence holders to adhere to their obligations under international sanctions.

Trade-related measures: arms, luxury goods and entry of individuals

These legal mechanisms for implementing Security Council resolutions 1718 (2006) and 1874 (2009) include concrete measures dealing with trade-related measures covering the prevention of direct or indirect supply, and the sale or transfer to and from the Democratic People's Republic of Korea of all arms and related material, and luxury goods under article 4 (1) and article 4 (2).

In Malta's subsidiary legislation, Legal Notice 275 of 2006, as amended by Legal Notice 425 of 2007, entitled "United Nations Sanctions (Democratic People's Republic of Korea) Regulations" states under article 4:

Article 4

(1) The direct or indirect supply, sale or transfer to the DPRK from Malta or by citizens of Malta, or using Malta's flag vessels or aircraft, of arms and luxury goods, whether or not originating from Malta, and the provision of any technical training, advice, services or assistance related to the provision, manufacture, maintenance or use of such arms, is prohibited.

(2) The procurement by citizens of Malta, or using Malta's flag vessels or aircraft, of arms from the DPRK, whether such arms originate in the territory of the DPRK or not, is prohibited.

Moreover, Malta is committed to prohibiting the procurement of support for or the promotion of the policies of the Democratic People's Republic of Korea in relation to items ranging from nuclear, ballistic missiles and other programmes related to weapons of mass destruction. In particular, Malta is committed to setting up measures to monitor the travel and the transit of individuals. The State of Malta is responsible for management of the entry, exit and residence of foreigners in Malta.

Moreover, article 5 of the Malta's subsidiary legislation, Legal Notice 275 of 2006, as amended by Legal Notice 425 of 2007, entitled "United Nations Sanctions (Democratic People's Republic of Korea) Regulations" states the following on the matter in article 5:

Article 5

(1) No persons designated by the Committee or by the Security Council as being responsible for, supporting or promoting the DPRK policies in relation to its nuclear, ballistic missile and weapons of mass destruction related programmes, may enter into or transit through Malta.

(2) The provisions of sub-regulation (1) shall also apply to such persons' family members and nothing shall oblige Malta from refusing entry into its territory to any of its own citizens.

(3) The measures imposed by sub-regulation (1) shall not apply where the Committee determines that such travel is justified on the grounds of humanitarian need, including religious obligations, or where the Committee concludes that an exemption would further the objectives of the Resolution.

In view of the nuclear test conducted in 2009 by the Democratic People's Republic of Korea in violation of Security Council resolution 1718 (2006), the Security Council adopted resolution 1874 (2009), acting under Article 41 of Chapter VII of the Charter of the United Nations.

In respect of Security Council resolution 1874 (2009), subsidiary legislation 365.29 was issued in the form of a Legal Notice, dated 18 September 2009. That Legal Notice further emphasizes and covers the scope of subsidiary legislation 365.23, entitled "United Nations Sanctions (Democratic People's Republic of Korea) Regulations", already mentioned above. The prohibition of procurement for and from the Democratic People's Republic of Korea of "all arms and related material" and the exemption of small arms and light weapons have been added, together with the imposition of a five-day notice to the Committee prior to any deal in such weapons.

Article 4 of Malta's subsidiary legislation, Legal Notice 251 of 2009, entitled "United Nations Sanctions (Democratic People's Republic of Korea) (Further Sanctions) (2009) Regulations" states:

Article 4

4. (1) The direct or indirect supply, sale or transfer to the DPRK from Malta or by a citizen of Malta, or using Malta's flag vessels or aircraft, of all arms and related material, as well as of financial transactions, technical training, advice, services or assistance related to the provision, manufacture, maintenance or use of such arms or material, whether originating from Malta or not, shall be prohibited.

(2) The prohibition of sub-regulation (1) shall not apply for small arms and light weapons:

Provided that the authorities of Malta shall exercise vigilance over the direct or indirect supply, sale or transfer to the DPRK of small arms or light weapons and shall notify the Committee at least five days prior to any sale, supply or transfer of small arms or light weapons to the DPRK.

Financial-related measures: freezing of funds, financial assets and economic resources

In order to implement Security Council resolutions 1718 (2006) and 1874 (2009), the Central Bank of Malta and the Malta Financial Services Authority have undertaken precautionary measures by directing banking and credit institutions, through announcements and warnings, to apply the fullest level and highest standards of customer identification and to issue reports on excessive cash transactions, international electronic money transfers and suspicious transactions to the Malta Police, the Central Bank of Malta and the Malta Financial Services Authority in respect of banking inspection and supervision authority for monitoring, handling and reporting to the competent authorities.

Malta is committed to freezing the funds owned by persons and entities supporting or aiding the nuclear and other weapons of mass destruction and ballistic programmes of the Democratic People's Republic of Korea; to preventing the provision of financial services related to those programmes and the provision of public financial support for trade with the Democratic People's Republic of Korea that could contribute to those programmes; and to not entering into new commitments for financial assistance to the Democratic People's Republic of Korea, except for humanitarian and developmental purposes.

Article 6 of Malta's subsidiary legislation, Legal Notice 275 of 2006, as amended by Legal Notice 425 of 2007, entitled "United Nations Sanctions (Democratic People's Republic of Korea) Regulations" states:

Article 6

(1) Any funds, other financial assets and economic resources which are in Malta and which are owned or controlled directly or indirectly by the persons or entities designated by the Committee or by the Security Council pursuant to regulation 5(1), or that are held by entities owned or controlled directly or indirectly by any persons acting on their behalf or at their direction, as designated by the Committee, shall be immediately frozen.

(2) Such funds, financial assets or economic resources shall be prevented from being made available by any person or entity in Malta to or for the benefit of such persons or entities.

(3) The provisions of this regulation do not apply to funds, other financial assets and economic resources that have been determined by the authorities of Malta:

(a) to be necessary for basic expenses, including payment for foodstuffs, rent or mortgage, medicines and medical treatment, taxes, insurance premiums, and public utility charges, or exclusively for payment of reasonable professional fees and reimbursement of incurred expenses associated with the provision of legal services, or fees or service charges for the routine holding or maintenance of frozen funds, other financial assets and economic resources, after notification to the Committee of the intention to authorise, where appropriate, access to such funds, other financial assets and economic resources, and in the absence of a negative decision by the Committee the foregoing shall be effected within five working days of such notification;

(b) to be necessary for extraordinary expenses, provided that such determination has been notified to the Committee and has been approved by the Committee; or

(c) to be the subject of a judicial, administrative or arbitral lien, or of a judgement, in which case the funds, other financial assets and economic resources may be used to satisfy that lien or judgement:

Provided that such lien or judgement was entered prior to the date of the Resolution, that they are not for the benefit of a person referred to in sub-regulation (1) or an individual or entity identified by the Security Council or the Committee, and that they have been notified to the Committee.

Malta is also committed to prohibiting a Maltese natural or legal person from entering into new commitments in relation to grants, financial assistance or concessional loans to the Democratic People's Republic of Korea, except in the case of humanitarian and developmental cases.

Articles 6 and 7 of Malta's subsidiary legislation, Legal Notice 251 of 2009, entitled "United Nations Sanctions (Democratic People's Republic of Korea) (Further Sanctions) (2009) Regulations" state:

Article 6

6. It shall be prohibited to enter into new commitments for grants, financial assistance, or concessional loans to the DPRK, in the territory of Malta or by a citizen of Malta or a company registered in Malta, or a person or financial institution in Malta:

Provided that such new commitments for grants, financial assistance, or concessional loans are not required for humanitarian and developmental purposes directly addressing the needs of the civilian population, or the promotion of denuclearization.

Article 7

7. It shall be prohibited to provide public financial support for trade with the DPRK where such financial support could contribute to the DPRK's nuclear-related or ballistic missile-related or other WMD-related programs or activities.

Inspection regime

Malta also implements an inspection regime that covers all cargo to and from the Democratic People's Republic of Korea, including ports and airports, in conformity with domestic and international legislation. This is meant to cover the inspection of Maltese vessels believed to contain prohibited items on the high seas and to seize and dispose of prohibited items identified in inspections. In the event that inspections are held on the vessels of other States, Malta is obliged to report the inspection, seizure and disposal. In the event of non-cooperation by the flag State, this shall be reported as well. Malta prohibits the provision of bunkering services to vessels of the Democratic People's Republic of Korea believed to be carrying prohibited items.

In Malta's subsidiary legislation, Legal Notice 275 of 2006, as amended by Legal Notice 425 of 2007, entitled "United Nations Sanctions (Democratic People's Republic of Korea) Regulations", article 7 states:

7. It shall be lawful for any person who is authorized to carry out such activity, to inspect cargo to or from the DPRK, as may be necessary, so as to ensure compliance with the prevention of illicit trafficking in nuclear, chemical or biological weapons, their means of delivery and related materials.

Malta imposes a penalty up to 116,468.67 euros upon convicted persons, in accordance with article 8 of the same regulations implementing Security Council resolutions 1718 (2006) and 1874 (2009) in cases of violations against those regulations.

In Malta's subsidiary legislation, Legal Notice 275 of 2006, as amended by Legal Notice 425 of 2007, entitled "United Nations Sanctions (Democratic People's Republic of Korea) Regulations", article 8 states:

8. Any person found guilty of an offence against these regulations shall, on conviction, be liable to a fine (multa) not exceeding one hundred and sixteen thousand and four hundred and sixty-eight euro and sixty-seven cents (116,468.67).

In 2013, the Enforcement of European Union Sanctions (Democratic People's Republic of Korea) Regulations, 2013 were issued under the powers of the National Interest (Enabling Powers) Act (Cap. 365).

To date there have been no reports, from all Sanctions Monitoring Board members and the agencies they represent, of any violation of the sanctions against the Democratic People's Republic of Korea. Council of the European Union regulation 296/2013 of 26 March 2013 amending Council regulation 329/2007, concerning restrictive measures against the Democratic People's Republic of Korea, and European Commission implementing regulation 370/2013 of 22 April 2013, amending Council regulation 329/2007 concerning restrictive measures against the Democratic People's Republic of Korea, are directly applicable since these are

European Union regulations, which, as entire European Union legislative acts, become part of national law. Legal notices on penalties are awaiting publication.

Malta reaffirms its commitment to fully implementing Security Council resolutions. The Ministry of Foreign Affairs of Malta condemned the nuclear tests of the Democratic People's Republic of Korea, which are in violation of international obligations and "the regrettable string of provocative actions that have served to increase regional tensions".[c]

[c] Available from www.foreign.gov.mt/default.aspx?MDIS=21&NWID=4353.